

# ENGLISH NATURE POLICY STATEMENT ON THE DENOTIFICATION OF SSSIs

## Introduction

1. In 2000 the Countryside and Rights of Way (CRoW) Act made a number of changes to the Wildlife and Countryside Act 1981 (the '1981 Act'). One of the amendments provided English Nature with the power to remove an SSSI notification (section 28D of the 1981 Act), hereafter referred to as the denotification of a site.
2. In 2005 English Nature developed guidelines on the way that the denotification of a SSSI will be considered. Between March and June 2005 a public consultation document entitled *Procedural Guidelines for the removal of an SSSI notification* was issued and asked for comments on the principles and procedures outlined in the document. The responses to the public consultation were summarised in a report, which made recommendations to the Council of English Nature in December 2005. This policy statement is a concise version of the Guidelines that have now been approved for operational use by English Nature staff.
3. This policy statement forms part of a series which sets out the principles and procedures that English Nature will follow in determining whether any site, or part of a site, should be denotified. It will be used by English Nature staff in conjunction with guidance on enforcement procedures issued in 2004 and guidance on the notification of an SSSI, and should also be read in conjunction with the SSSI Notification Policy Statement.

## Legislation

4. The legislation relating to the denotification of SSSIs is contained in section 28D of the Wildlife and Countryside Act, as amended<sup>1</sup>. Unlike the duty to notify a site, this is a discretionary power and with particular regard to denotification the legislation states that where English Nature is of the opinion that all or part of an SSSI is not of special interest by reason of its flora, fauna, or geological or physiographical features, it **may** exercise this power. The legislation also sets out who must be informed and specifies the timescale and manner in which those notified may make representations and objections to that notice.
5. The procedures largely mirror those of the notification process, except that the denotification of any site (or part of a site) is only legally effective following confirmation by English Nature (unlike notifications of new SSSIs and variations, additions and enlargements to existing SSSIs under sections 28 - 28A - C, which take effect from the date of notification).

## Denotification principles

6. English Nature sees the denotification of an SSSI (either completely or in part) as a rare event where the special interest has been lost. For those cases where denotification is being considered we will apply the following principles to assess whether a site (or part of) is of special interest;

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<sup>1</sup> Section 75 of and Schedule 9 to the Countryside and Rights of Way Act 2000 amended the Wildlife and Countryside Act 1981. The CRoW Act 2000 can be found on the HMSO website at [www.legislation.hmso.gov.uk/acts/acts2000/20000037.htm](http://www.legislation.hmso.gov.uk/acts/acts2000/20000037.htm).

- i. Whether the interest meets the requirements of the *Guidelines for selection of biological SSSIs* and/or the *Geological Conservation Review*.
- ii. If restoration of the special interest is possible or practicable.
- iii. Where the special interest has moved entirely outside the site, but remains adjacent or in close proximity, the site will not be denotified until the land now containing the special interest is notified.
- iv. Where there is some prospect that natural processes may return the special interest within a reasonable time, the site is unlikely to be denotified.
- v. Where cartographical errors were included in the original notification of the site.
- vi. A change of special interest from that for which it was notified, or a change that will lead to a new special interest, will not usually be a reason for denotification.

### **Loss of special interest**

7. When deciding whether an area is of special interest, we will take into account:
  - a) the presence and condition of the features of interest, including any impacts resulting from natural change or man-made activities; and
  - b) whether the interest features can be recovered by any reasonably practicable means.

[It should be noted that special interest on geological sites is covered in paragraphs 13 and 14]

Natural change as defined here is unconstrained change caused by broad-scale natural factors, usually from outside the site, which modifies the nature of the site, or the populations of species using the site. This may be so extreme as to lead to the loss of all special interest within the site, with no prospect of return. Where there is some prospect that natural processes may return the special interest within a reasonable time, the site is unlikely to be denotified.

8. Where English Nature is of the opinion that there has been a loss of the special interest the site should be monitored, (with respect to the notified feature(s) of interest), over a sufficient period of time to determine whether some or all of the features are able to return. In cases where the special interest does not return or is not recoverable and all reasonable attempts at restoration have failed, it may be considered to be irreversibly lost. In addition, a change of special interest from that for which it was notified, or a change that will lead to a new special interest, will not usually be a reason for denotification. Similarly, where the natural processes that are leading to the loss of the interest are of special interest in their own right, the site is also unlikely to be denotified.
9. Even under these circumstances, we believe that further consideration of the consequences is important before arriving at a decision. For example, in certain cases it may be necessary to consider the following:
  - a) The extent and distribution of habitats and species nationally.
  - b) How rare is the habitat that supports a particular species? If rare or unique, it may be appropriate to continue to protect it so that it may return in the long term. If the habitat is of special interest then it will remain an SSSI for this reason, even in cases where one or more of the features of interest for which it was notified are not present and consequently we may vary the citation of the

SSSI under S28A. Examples of this are sites which are affected by sea-level rise and/or climate change.

- c) Would restoration/re-creation of the habitat encourage the species to re-establish itself? If restoration was considered practicable and reasonable we would not consider denotifying the site.

### **Planning permission and public bodies responsibilities**

10. It is government policy that SSSIs should have a high level of protection and be sympathetically managed for the conservation and enhancement of their features of special interest. These aims are set out in Planning Policy Statement 9 (PPS9) *Biodiversity and Geological Conservation* and apply specifically in relation to developments requiring planning permission, but should be applied generally where public bodies are taking decisions which may affect SSSIs. All public bodies responsible for granting planning permission (this includes any form of regulatory consent, authorisation, licence or permission) have a statutory duty to take reasonable steps when making such a decision to further the conservation and enhancement of the interest features of a SSSI. These include seeking English Nature's assent for, or advice on, determination of the application, to take account of that advice and to inform us of any decision taken contrary to that advice. **The prospect of denotification, as a result of the loss of special interest through the implementation of a consent, is not a material consideration in the determination of the consent.**
11. Developments or other activities, which may damage features of interest of SSSIs, may be justified and legally permitted. This may result in permanently covering over, removing or otherwise destroying the site or part of the site. Activities which result in permanent loss or damage of the features of special interest may be authorised under a wide range of legislative powers. Denotification of the site will not, however, be considered in this context until after the special interest of the site has been lost irreversibly, through the passage of the development application, consideration and implementation of the permission in full.

### **Unconsented activities**

12. Denotification will not be considered as a course of action where the special interest has been depleted or lost through unconsented (ie illegal) activities. In these circumstances enforcement action and restoration measures will be considered which may include the adoption of a management plan within the site. Irrespective of how the special interest was depleted or damaged, denotification of the site will not be considered if restoration is reasonably practical, whether undertaken voluntarily or through other mechanisms.

### **Removal or replacement of a geological SSSI**

13. Geological/geomorphological SSSIs are identified and assessed in a different way to biological SSSIs. All potential geological SSSIs are first identified through the *Geological Conservation Review* (GCR) process before being submitted to English Nature's Executive Committee for approval. The suite of GCR sites reflects the range and diversity of Great Britain's geology and each site is regarded as of national importance which means that the site is the best or most representative example of a particular geological feature or period of geological time.

14. In addition to the differences between geological and biological site selection processes, the purpose of denotification also differs in that it plays an important role in maintaining the scientific standing of the geological SSSI series. The special element of a geological SSSI means that it is the best site for demonstrating a particular geological feature. Should a new geological site come to our attention that is scientifically better than the notified SSSI, it is a requirement of the GCR process that the existing site should be replaced with the new and better site. In this case the original SSSI is not considered the best or most representative and needs to be denotified and replaced with the new and scientifically better site. In such circumstances, denotification of the original SSSI will not be considered until notification of the new site has been confirmed. It is also important to note that for sites which contain both geological and biological features of special interest, the geological interest may be removed whilst retaining the SSSI for its biological interest.

### **SSSI denotification procedure**

15. English Nature's **Area Teams** are responsible for identifying and assessing any site (or part of a site) which may not be considered of special interest. Sites which may be considered by English Nature for denotification can be instigated by anyone provided that a detailed case is made setting out how the site is not of special interest. In the first instance contact should be made with the relevant Area Team.
16. The Area Team and relevant English Nature national specialist(s) will assess the interest of the site (or parts of a site) and agree whether or not the site (or parts of a site) is of special interest. The assessment will include an indication of whether the area is essential for the maintenance of the site's integrity, and whether any other course of action, e.g. restoration or re-introduction of the special interest, is reasonable or practically possible.
17. We will seek a comprehensive ecological survey of the site over a period of time to ensure that the interest(s) is not present; in addition we will seek the views of others who have an interest in the site, in particular those in the voluntary conservation sector. If it is concluded that the interest is not present within the site, and restoration is not a reasonable option and denotification is considered appropriate, the Area Team will prepare the case for consideration by English Nature's Executive Committee.
18. If the Area Team or the national specialists do not consider the special interest to be irretrievably lost or the site is not approved for denotification. The site remains an SSSI and the Area Team prepare a management plan, detailing how the special interest is to be restored, managed or enhanced.
19. In considering the proposed denotification of a SSSI the Executive Committee will use information from the Area Team to determine:
- a) whether or not there are appropriate grounds for denotification;
  - b) whether the site supports the special interest for which it was notified and if not, why not; and
  - c) whether there is any other special interest on all or part of the site.
20. In considering whether an SSSI should be approved for denotification, the Executive Committee may either:

- a) approve the denotification of all or part of the SSSI with or without modification;
- b) defer a decision and request further information; or
- c) reject the proposal.

Once the Committee is satisfied that the site is not of special interest they may approve the denotification of all or part of the site.

### **Consultation**

21. Once a site or parts of a site have been approved by the Executive Committee for denotification the Area Team notifies that fact to all owners, occupiers, local planning authorities, the Secretary of State, the Environment Agency and other interested parties, by sending out papers which:
  - a) state the legislation under which the denotification is being made, and
  - b) explain why the SSSI is not considered to be of special interest, and
  - c) include a map showing those areas of the site subject to the denotification.

The Area Team staff will also place an advertisement in at least one local newspaper announcing the denotification and providing contact details and notices (including a map of the site) will be placed on the site.

22. The documents relating to the denotification also set out the procedures for making objections to and/or representations about the denotification. We will generally require representations and objections to be made within four months of the date notifying the removal of all or part of the SSSI. As in the procedures for the notification of a site, all of those notified have the legal right to make an objection or representation about the denotification.
23. If Area Team staff receive representations or objections concerning the denotification of the site they will attempt, where appropriate, to resolve these issues before the decision on whether or not to confirm a denotification is made by the Council of English Nature. The site remains an SSSI until the time that Council's decision to confirm the denotification is notified to the Secretary of State and all other consultees. If we receive no response from those notified within the four month period specified in the notification, or where objections are received but subsequently resolved or withdrawn, English Nature officers will confirm the denotification under delegated authority from Council. Any unresolved objections are considered by the Council of English Nature.

### **Confirmation of the denotification of an SSSI**

24. The confirmation of the denotification of an SSSI (or part of an SSSI), closely follows that for the confirmation of the notification of an SSSI (see separate policy statement). In considering whether or not to approve confirmation of a denotification, Council take into account the interest for which the site was originally notified; why all or part of the site is not of special interest, why the interest features cannot be restored and whether there is any other special interest, together with all the objections and representations received.

25. At the meeting, Council may either i) approve confirmation of part, or the whole of the proposed area of SSSI for denotification, ii) defer the decision upon whether or not to approve confirmation of the de-notification, or iii) withdraw the denotification.
26. A decision upon whether or not to confirm denotification of an SSSI should be made within nine months of the original notice of the denotification and notice given to those notified. If no decision is taken within that period, the site will not be denotified and all of the site will remain an SSSI. Where a denotification is confirmed the land ceases to be an SSSI (or part of an SSSI) once notice of the confirmation decision is given, to the Secretary of State and all other consultees.

### **Other information**

27. This document sets out our denotification policy statement. It is not intended to be a detailed guide (please refer to the relevant legislation and get legal advice if necessary). There are details of the Wildlife and Countryside Act 1981 (as amended) and the Countryside and Rights of Way Act 2000 on Her Majesty's Stationery Office website at [www.hmso.gov.uk](http://www.hmso.gov.uk)
28. There are more details of our business and contact details on our website at [www.english-nature.org.uk](http://www.english-nature.org.uk). We have a formal comments and complaints procedure which we use to deal with an enquiry, suggestion or complaint we receive about the way in which we have dealt with a denotification or any other area of our work. Details of these procedures are also on our website.

English Nature  
August 2006